

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

WRECKING CORPORATION OF AMERICA, ST. LOUIS, INC.

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Wrecking Corporation of America, St. Louis, Inc. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "Wrecking Corporation" means Wrecking Corporation of America, St. Louis, Inc., a Virginia corporation.

SECTION C: Findings of Facts and Conclusions of Law

1. Section 62.1-44.5(A) of the Code prohibits discharges to State waters except in compliance with a certificate issued by the Board. Section 62.1-44.34:18 of the Code prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Section 62.1-44.34:19 of the Code requires the reporting of any oil discharges which may reasonably be expected to enter State waters, lands, or storm drain systems.
2. Delaware Cornerstone Builders, Inc. was awarded contract N62470-01-D-3407 for Project R 162-00 by the United States Department of the Navy on June 12, 2001. This project was the demolition of various buildings and structures at the Yorktown Naval Weapons Station.
3. Delaware Cornerstone Builders subcontracted with Wrecking Corporation of America to perform the demolition of the buildings.
4. On or about October 4, 2001, three electrical transformers were removed from a utility pole adjacent to Building 507. The contents of the three electrical transformers, consisting of up to 31 gallons of mineral oil, were released into a hole adjacent to the building left from the earlier excavation of a sewer manhole.
5. On October 31, 2001, DEQ staff documented the improper disposal of the oil from the transformers and the failure to report an oil discharge in violation of §§ 62.1-44.34:18 and 62.1-44.34:19 of the Code.
6. On November 13, 2001, the Golden Eagle Corporation excavated and disposed of the oil-contaminated soil. On November 19, 2001, DEQ determined that no additional remediation activities were required.
7. Notice of Violation No. 02-06-TRO-001 was issued to Wrecking Corporation on June 28, 2002 for the unpermitted discharge of oil. Notice of Violation No. 01-11-TRO-005 was issued to Delaware Cornerstone Builders on November 27, 2001 for the unpermitted discharge of oil

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a) and (8d), and 62.1-44.34:20, orders Wrecking Corporation, and Wrecking Corporation voluntarily agrees, to pay a civil charge of \$2,329 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. In addition, Wrecking Corporation, pursuant to Code § 62.1-44.34:18(C)(1) shall pay by separate check the amount of \$157.00 to reimburse the Commonwealth for the costs and expenses incurred by the Commonwealth for investigation of this incident. This check should indicate "VPSTF cost recovery" on the memo line. Both payments shall note that they are being made pursuant to this Order and shall include Wrecking Corporation's Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Wrecking Corporation, for good cause shown by Wrecking Corporation, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Wrecking Corporation by DEQ cited above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, Wrecking Corporation does not contest the jurisdictional allegations in the Order, but it does not admit the factual allegations or legal conclusions contained herein. Wrecking Corporation denies any and all violations alleged against it as set forth herein and enters into this Order and agrees to pay the civil charge set forth above solely to settle this matter with the Board and DEQ. This Order does not limit Wrecking Corporation from pursuing any remedies it may have against Delaware Cornerstone Builders, Inc.
4. Wrecking Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Wrecking Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Wrecking Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the

Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Wrecking Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Wrecking Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wrecking Corporation shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wrecking Corporation. Notwithstanding the foregoing, Wrecking Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Wrecking Corporation. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wrecking Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Wrecking Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day _____ of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Wrecking Corporation, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2002, by _____, who is

Michael P. Amann

President, on behalf of the Corporation.

Notary Public

My commission expires: _____.